

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) NO: 19-CR-1715 RB
)
JAMES CHRISTOPHER BENVIE,)
)
Defendant.)

TRANSCRIPT OF ZOOM VIDEO CONFERENCE PROCEEDINGS
SENTENCING HEARING
BEFORE THE HONORABLE ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE
THURSDAY, OCTOBER 15, 2020, 1:29 P.M.
LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO

Video Appearances of Counsel:

FOR THE UNITED STATES:

UNITED STATES ATTORNEY'S OFFICE
District of New Mexico
200 N. Church St.
Las Cruces, NM 88001
BY: RANDY CASTELLANO, ESQ.

FOR THE DEFENDANT:

LAW OFFICE OF ORLANDO MONDRAGON
1028 Rio Grande Ave.
El Paso, TX 79902
BY: ORLANDO MONDRAGON, ESQ.

Also Present: Sabrina Nagel and Nick Nevares, Probation
Officers
Parker Olding, Case Agent
Eric Cremeens

(Proceedings reported by machine shorthand and
transcript produced by Computer-Aided Transcription.)
REPORTED BY: VANESSA I. ALYCE, CRR, RPR, NM CCR, FOGR
100 North Church Street
Las Cruces, NM 88001
Phone: (575) 528-1430
Email: Vanessa_Alyce@nmd.uscourts.gov

UNITED STATES DISTRICT COURT
100 N. Church Street, Las Cruces, NM 88001
(575) 528-1430

1 (On the record at 1:29 P.M.)

2 THE COURT: Good afternoon, everyone. This is
3 Judge Brack.

4 This is *United States of America versus James*
5 *Christopher Benvie*. Mr. Benvie appears this afternoon by a
6 remote video link from the Cibola County Detention Center.
7 His counsel, Mr. Mondragon, also appears by a remote video
8 link, as does Mr. Castellano on behalf of the Government.
9 Ms. Nagel is here from the Probation Office, as well; here
10 also by video.

11 I have a waiver form that was filed just
12 yesterday, October 14th. It bears the signature of
13 Mr. Benvie and Mr. Mondragon and it waives Mr. Benvie's
14 personal appearance at the hearing this afternoon. And
15 given the pandemic, I'll find that it is in Mr. Benvie's
16 interest, as well as that of justice, generally, that he be
17 allowed to proceed in this fashion.

18 We're here for sentencing this afternoon.

19 Mr. Benvie, are you able to hear me okay?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Mr. Mondragon, I have
22 reviewed the PSR. Have you reviewed the Presentence
23 Investigative Report with Mr. Benvie?

24 MR. MONDRAGON: We have, Your Honor. And we've
25 reviewed both of them.

1 THE COURT: All right. Are there any additions,
2 corrections, or objections other than those noted in your
3 pleadings?

4 MR. MONDRAGON: No, Your Honor. Just the
5 objections I filed.

6 THE COURT: All right. So I've reviewed the PSR;
7 your objections to the PSR that were filed May 20th; the
8 Government's response thereto, filed August the 12th; an
9 addendum to the Presentence Report that was filed on
10 July 7th relating to objections; and a revised PSR. I've
11 reviewed both the original and the revision that was filed
12 September the 9th, minutes from the August 18th
13 detention hearing, and an order relating to that detention
14 hearing.

15 Mr. Mondragon, is there anything -- well, I was
16 handed, just a few moments before I came in, an exhibit list
17 from you that transmits an -- you call it an "affidavit" of
18 Antonio Herrera, in fact, it's a letter addressed to me from
19 Mr. Herrera, and then some -- a letter to the FBI director
20 by members of Congress, media excerpts regarding the ACLU
21 and the militia. I have not had a chance to review all of
22 those things. It was just handed to me. I guess it was
23 filed late last night and I've just now seen it. So if you
24 want to point to particular matter contained in your
25 exhibits, I'll be glad to zero in on those. And I think one

1 of the case agents, Parker Olding, appears this afternoon by
2 phone -- I guess, Jess? Or on Zoom. And Mr. Cremeens, the
3 father to the victim of one of Mr. Benvie's earlier -- well,
4 there was a matter relating to collecting funds on behalf of
5 Mr. Cremeens' son.

6 So Mr. Mondragon, having said that, is there
7 anything else I should have considered by way of preparing
8 for the hearing this afternoon?

9 MR. MONDRAGON: No, Your Honor.

10 THE COURT: All right. Let me hear you on your
11 objections. I've read the materials, as I've said. If you
12 have anything else you'd like to say relating to them, I'm
13 glad to hear you.

14 MR. MONDRAGON: Let's see, Your Honor, I guess
15 the Court remembers the trial. It was a two-day trial. And
16 I guess they have two videos that, even though there's other
17 testimony about the group that my client was involved with,
18 the Patriots, that they're detaining people, but the videos,
19 themselves, the videos that we had as evidence showed my
20 client stopping them, but to say that it rose to the level
21 of an arrest, a detention, a search -- I think the Guideline
22 reads that "with intent to conduct an unlawful arrest,
23 detention or search." And my client's, I guess, intent was
24 to stop them. It was never to hold them against their will
25 or detain them. He was to stop them from coming in

1 illegally. So I don't know if it rises to the level where
2 you can give him a six-level increase because, based on the
3 facts, we don't think it rises to the level of an arrest,
4 unlawful detention or a search.

5 The individuals were not handcuffed. They
6 were -- I mean, they were pretty much free to leave. They
7 were not restrained. And the individuals, at least on the
8 videos, that did have weapons was [sic] not my client, Your
9 Honor, it was the other Patriots that were there. And
10 they're the ones that had weapons. And I guess, if I was
11 one of the aliens, I would consider them more of detaining
12 me than Mr. Benvie, because they're the ones with the
13 weapons; they were an authority and they could cause harm to
14 them.

15 So that's one of the reasons for the objections,
16 Your Honor, because we don't believe that it resulted in an
17 unlawful detention, arrest, or search of those individuals.
18 And I think the Guideline's more, Your Honor, for something
19 else besides just stopping them. Usually, when you have an
20 unlawful arrest, there's something else behind it. Are they
21 going to rob them? Are they going to kidnap them? We
22 didn't have none of that here, so I don't think the
23 Guidelines should -- that enhancement should apply, Your
24 Honor.

25 Regarding the perjury charge, Your Honor, the

1 two-level enhancement --

2 THE COURT: Mr. Mondragon, let me interrupt you.
3 Let me allow Mr. Castellano --

4 MR. MONDRAGON: Okay.

5 THE COURT: -- to respond, and Ms. Nagel to
6 respond, if she'd like --

7 MR. MONDRAGON: Understood, Your Honor.

8 THE COURT: -- relating to the first objection
9 before we move to the second. And when it's your turn to
10 speak again, Mr. Mondragon, if there's anything you can do
11 to increase the volume, that would help me. I'm having a
12 little difficulty hearing you. And I'm sure that has to do
13 with the -- as much to do with my hearing problem, my
14 hearing loss, as it does the technology, but anything you
15 can do to help me would be appreciated.

16 Mr. Castellano, respond to the first objection,
17 please.

18 MR. CASTELLANO: Yes, Your Honor. As indicated
19 in my response, there is a difference between 2J1.4(b)(1),
20 which is the provision we're talking about now -- and the
21 Courts have noted that the failure to include a specifically
22 defined term within the offense characteristic of
23 impersonation seems to suggest that it was intentional and
24 that an arrest, as that term is used in this section, does
25 not necessarily entail the sort of forceable physical

1 restraint contemplated by other provisions of the
2 Guidelines.

3 So I think, looking at the two dates of -- in
4 which we have convictions, there is sufficient evidence on
5 those dates, alone, where the defendant stopped people,
6 questioned them for some period of time, and held them, even
7 if it was for a mere period of minutes until Border Patrol
8 got there, that they certainly were restrained or stopped,
9 as contemplated by this particular Guideline.

10 I've also noted for the Court some of the other
11 conduct, the relevant conduct in this case in which
12 Mr. Benvie admitted under cross-examination that, on many
13 other occasions, he had, even in his videos, noted that they
14 had captured or detained or used other similar words when
15 encountering the migrants in this case. And so I think the
16 two instances where he was convicted are sufficient to
17 support this enhancement. I also believe the relevant
18 conduct also is sufficient to establish that the enhancement
19 applies in this case.

20 And so, since the Court has read my response, I'm
21 not sure I'll need to add much more unless the Court has
22 questions, but I think it's pretty clear that for purposes
23 of that Guideline provision that these individuals were
24 detained.

25 THE COURT: Ms. Nagel, is there anything you'd

1 like to add to the addendum?

2 PROBATION OFFICER: I don't, Your Honor. Unless
3 you have specific questions.

4 THE COURT: No, ma'am, I don't think so.

5 The proposed enhancement relates to if the
6 impersonation was committed for the purpose of conducting an
7 unlawful arrest. And as I recall the testimony and the
8 videos, I think that you've got a bunch of people out there
9 who were, several of them, dressed in camouflage, some of
10 them carrying weapons. The clothing that they were wearing
11 confused even Border Patrol agents, I'm told, and not only
12 that, the -- Mr. Benvie, when encountering one of the
13 groups, told them to stop, he asked them what they were
14 doing and then began to question them and at one point told
15 them to sit down for that questioning.

16 For the purposes of the six-level increase, I
17 believe that the impersonation was committed for the purpose
18 of conducting an unlawful arrest and I will deny the defense
19 objection relating to that six-level increase for the
20 reasons stated and the reasons contained in the Government's
21 response and the addendum.

22 Mr. Mondragon, I'll hear you on your second
23 objection.

24 MR. MONDRAGON: Your Honor -- sorry. Sorry, Your
25 Honor.

1 THE COURT: Go ahead.

2 MR. MONDRAGON: Your Honor, I guess, on that one,
3 I'll just stand by my written objection, basically that the
4 fact that the jury found him guilty doesn't -- not
5 necessarily make -- sustain that he committed perjury, Your
6 Honor. He might have testified differently and -- but a
7 difference of -- in testimony does not make perjury. Your
8 Honor would have to find that he, I guess, intentionally and
9 knowingly lied under oath. I believe in -- subjectively, my
10 client, what he testified to is what he believed happened.
11 And the fact that the agents or the Border Patrol believed
12 differently, I don't think it rises to perjury, Your Honor.
13 That's what I have on that.

14 THE COURT: Thank you.

15 Mr. Castellano, do I need to make a specific
16 finding that there was perjury in order for this enhancement
17 to apply?

18 MR. CASTELLANO: Let me check, Your Honor. I
19 think the short answer is probably yes. And that's why I
20 have done my best to outline the specific statements in this
21 case, which -- which would support that enhancement.

22 So the requirement is, yes, if -- a perjurious
23 statement needs to be identified, finding that such
24 testimony was false, material, and given within with the
25 intent to commit perjury. The case law says it can be

1 fairly conclusory, once the Court generally identifies the
2 nature of the statements that were provided. It doesn't
3 have to be specific, but I have given the Court specific
4 statements in this case which I think support the perjury
5 enhancement in this case or the obstruction enhancement.

6 (Reading) "The Court need not recite the perjured testimony
7 verbatim, but may generally identify the testimony at issue,
8 so that when the appellate Court reviews the transcript, it
9 can review the *Dunnigan* findings regarding the perjury
10 elements without having to speculate on what the Court might
11 believe was the perjurious testimony."

12 So I think the Court, in a sense, does need to
13 find that the statement or statements were perjurious in
14 nature. And those statements, I would say, generally, are
15 those in which the defendant claimed not to be acting as a
16 Border Patrol agent, when it is abundantly clear that he
17 was. I think the other statements would be those where he
18 claimed to have been acting with authority given by the
19 Border Patrol. And he did state -- when asked whether he
20 was given authority by the Border Patrol to detain people,
21 defendant responded (reading), "We were given the authority
22 to ask them to stop and sit down, yes, we were." And that's
23 from his testimony on pages 58 and 59 of the transcript.
24 And of course, the other statements would be where he said
25 he wasn't acting as a Border Patrol agent. And those

1 statements are material because, had the jury believed those
2 statements, they would have had to acquit him. And so they
3 were certainly material in nature because they went to the
4 elements of the offense.

5 I was reviewing -- and related to his testimony
6 and some of the things he said, I reviewed Agent Slosar's
7 testimony last night. He was the patrol agent in charge
8 from the Santa Teresa station. He said that, in that fiscal
9 year, they apprehended approximately 24,000 people in the
10 fiscal year in which Mr. Benvie was arrested out there.
11 Mr. Benvie testified that, quote -- when he was asked
12 (reading), "So you said you were associated with Border
13 Patrol, in your mind, because you had spoken to Border
14 Patrol agents?" That's on page 58 of his testimony.

15 His response was, "Since I was there for
16 five months and I turned over 12,970 people, that's a little
17 bit more than association."

18 And so clearly, he claimed to have been
19 associated with them. He made a fairly outlandish claim
20 that he was responsible for more than half of the Border
21 Patrol apprehensions in the territory in that fiscal year,
22 and because he believed that was true, or at least he told
23 the jury that was true, he felt he was associated enough
24 that he had authority to do these things when, in fact, he
25 did not have authority to do them.

1 So as I said earlier in the response, I
2 identified a number of statements that I think qualify. And
3 the Court could rely on those for purposes of finding the
4 enhancement applies.

5 THE COURT: Thank you.

6 And Ms. Nagel?

7 THE DEFENDANT: Can I interject something here,
8 since he's referring to my statements?

9 THE COURT: No, sir. I'm going to certainly give
10 you an opportunity to speak, Mr. Benvie, in turn, but this
11 wouldn't be the time.

12 Ms. Nagel, did you have anything you wanted to
13 add to your addendum?

14 PROBATION OFFICER: I don't, Your Honor.

15 THE COURT: All right.

16 I will find that Mr. Benvie perjured himself at
17 the trial. I think it's in -- there are several instances
18 of perjury. And one of them was he said, "In fact, I was
19 associated with Border Patrol." And asked whether he was
20 given authority by Border Patrol to detain people, he
21 responded, "We were given that authority to ask them to stop
22 and sit down, yes, we were." And in the video, he referred
23 to himself as "Border Patrol." And then, at trial, he said
24 "I'm not a Border Patrol agent and I never portrayed myself
25 as one."

1 And in one of the videos, Mr. Benvie went so far
2 as to say, "Sometimes you have to do things you wouldn't
3 normally do and some of those things are illegal." He never
4 admitted to any such conduct in front of the jury, but
5 rather denied that conduct. When questioned about who gave
6 him that particular authority, he indicated that several
7 agents had, but he declined to identify them.

8 And in those -- these statements that I've
9 referenced were material, given that, if the jury had
10 believed any of them, that he was actually deputized or
11 authorized by Border Patrol to encounter these people, stop
12 them, make them sit down, ask them questions, then it's a
13 whole 'nother issue. But in fact, I don't believe he had
14 that authority. I think he misrepresented that authority.
15 And on that basis, I will deny the objection relating to the
16 perjury enhancement.

17 Mr. Mondragon, are there any -- any other
18 objections that we need to deal with?

19 MR. MONDRAGON: No, Your Honor, those were my
20 only two.

21 THE COURT: Mr. Castellano, anything else on the
22 objections?

23 MR. CASTELLANO: No, Your Honor.

24 THE COURT: All right. Then, Mr. Mondragon, I'll
25 hear you on Mr. Benvie's behalf, generally.

1 MR. MONDRAGON: Your Honor, I guess the reason I
2 provided the exhibits regarding the -- I guess, the media
3 excerpts and the letters from the Congress to the FBI is, I
4 guess, to show the climate at that time. And still my
5 client, to this day, believes that basically it's a
6 political prosecution, even though the jury found otherwise,
7 Your Honor. But this is just to shed light on the climate
8 at that time.

9 The other affidavit or letter, Your Honor, is
10 from when he was out on bond. That was his actual
11 immediate -- I guess, his -- his boss. The owner of the
12 restaurant where he worked. And I know that he -- my client
13 was revoked on the conditions of release because he was not
14 where he was supposed to be, but according to Mr. Herrera's
15 letter, Your Honor, he was a good employee, never touched
16 alcohol. He kept his business above water. So he was very
17 productive while he was out on bond. And he was there for
18 about a year, Your Honor, without any violations until the
19 violation that got him detained.

20 And Your Honor, in talking to my client, and I
21 think the Court's aware from when we had the trial, he's
22 very adamant. He still thinks that he had a right to be out
23 there. I would just ask the Court to look at the -- his
24 main purpose to be out there, Your Honor, wasn't really to
25 harm these individuals. In talking to him, Your Honor, a

1 lot of the times, the individuals, they -- I guess they
2 stopped. Some were needing help. They gave them help.
3 They had worse offenses other than illegal reentry. There
4 were convicted felons out there. So to him, he was doing --
5 he was serving a purpose, Your Honor.

6 We don't have anything else besides
7 impersonation, Your Honor. You don't have -- typically, on
8 this type of offense, you have them where they do something
9 else besides -- they use impersonation to do something else,
10 to take money, to physically assault them. We didn't have
11 that here, Your Honor. My client honestly believed he was
12 out there doing a job, trying to keep dangerous people out,
13 Your Honor. And like I said, he would track down Border
14 Patrol and they would go to Border Patrol, but there was
15 nothing else to it. He didn't harm them in any way. These
16 individuals, if my client wasn't there, they would have made
17 it probably illegally into the U.S., and some of them
18 probably have offenses.

19 If you look at his history, Your Honor, he does
20 have some issues, Your Honor, but my client's been mostly
21 productive. He's had a working history. I didn't file a
22 variance motion, Your Honor, but I think, the one year that
23 he was out on conditions of release, he complied with
24 everything. So I would think he would be a good probation
25 candidate. And if not, Your Honor, we would ask for the

1 bottom end of the Guidelines. But that's all we have, Your
2 Honor.

3 THE COURT: Thank you.

4 Mr. Castellano?

5 MR. CASTELLANO: Your Honor, the United States is
6 seeking a Guideline sentence in this case. I think it's
7 appropriate, given not only the Guidelines calculations, but
8 the Section 3553 factors.

9 I just want to give a quick note, before I
10 forget, Mr. Benvie believes this is a political prosecution,
11 and he's attached an exhibit which is three Democratic
12 members of Congress writing to the FBI regarding their
13 concerns at the border. I can tell the Court this is not a
14 political prosecution. Certainly, the jury found all
15 elements of the offense. And Mr. Benvie will probably be
16 disappointed to know that it was a Republican-appointed U.S.
17 Attorney who authorized charges in this case. So I think
18 the problem is what they're doing out there was illegal.
19 And a lot of people noticed what was going on out there. So
20 I won't say anything more than that, but it certainly was
21 not a political prosecution. We met all elements of the
22 offense. The jury agreed and found him guilty.

23 Now, certainly, the defendant, in his own mind,
24 thought what he was doing was right. And the Court now
25 knows from his history that whenever Mr. Benvie believes

1 he's right about something or has some sort of a task he
2 thinks is justified, his hero complex kicks in and he starts
3 doing things which ultimately go too far.

4 And the Court knows that from the trial
5 testimony. Mr. Benvie was caught with a stolen moving truck
6 and -- which was only supposed to be out for one day. And
7 his justification was he was going to provide hurricane
8 relief for people in need. When asked about the length of
9 having taken this, he said, Well, no one ever asked for it
10 back and no one reported it. It was the computer who
11 reported it. When you rent something for day and you don't
12 return it, that's a pretty clear indication that you think
13 you're doing things the right way when, clearly, you're way
14 off track. And that's just one example.

15 So in addition to the Guidelines, looking at the
16 3553 factors, Your Honor, Mr. Benvie's history goes back
17 25 years, starting in paragraph 46, with a disorderly
18 conduct. And I will say this is a case where, sometimes
19 when you first meet a defendant, you're kind of wondering
20 how they got here, but when you look at his history, you
21 completely understand how he got to where he is today.
22 Going back to paragraph 47, he's got a theft by check.
23 Paragraph 48 is another theft. Paragraph 49 I won't say too
24 much about because there aren't many details, but there is a
25 trespass identified there. There is a public intoxication

1 charge in paragraph 50.

2 And then, looking at beginning with paragraph 54,
3 there are a series of civil judgments against Mr. Benvie
4 where, once again, another court has found that he was in
5 the wrong on these particular occasions. There is a
6 judgment against him for \$4,600 from a finance company. He
7 was evicted for nonpayment of rent. And then there are
8 other judgments. At the top of page 12, *Twin Cities Gold*
9 *and Silver Exchange versus Guardian Gold* and others, a
10 judgment for \$67,000. *Yellow Book Sales Distribution*
11 *Company, Incorporated, versus Legacy Rare Coin and Bullion*
12 *and James Benvie*, \$25,000 judgment. And another judgment
13 for \$1,800.

14 And then the Court also knows from the trial
15 testimony that Mr. Benvie went so far as to steal checks
16 from his grandparents and write hot checks on their account
17 without permission. And that was another occasion where,
18 once again, he thought he was justified and he thought that
19 the ends justified the means. And that is just the long
20 track record that he has established which should weigh
21 against him today for purposes of sentencing.

22 As the Court knows, in paragraphs 55 and 56, he's
23 got two warrants issued for theft and possession of a stolen
24 vehicle, which is the vehicle I already mentioned. And when
25 he was caught on that occasion, he was, once again,

1 panhandling for a young -- young boy who had been treated
2 with cancer at a time when he was no longer even being
3 treated for cancer. But Mr. Benvie saw it as another way of
4 collecting money and tricking people into providing money
5 because, once again, he thought he was justified.

6 So I think, given his history -- the nature and
7 characteristics of the offense and his own personal history,
8 I think certainly that in this case a Guideline sentence is
9 warranted.

10 I will say the Court saw another example at the
11 revocation hearing where Mr. Benvie, according to his
12 co-worker, not wanting to go back to the halfway house,
13 would often stay longer at work, causing the halfway house
14 to pick him up after midnight, using their resources to get
15 him after midnight because he didn't want to go back to the
16 halfway house. So he used work as an excuse and hung out at
17 his place of business until way after hours. And that was
18 just another example of him trying to manipulate things when
19 he thinks it serves his interests. And of course, he told
20 the Court that he was working when he was, in fact, out and
21 about filming for purposes of the internet and -- once
22 again, just another example.

23 So I think, given these things, Your Honor, I
24 think -- and I will ask the Court to impose the Guideline
25 sentence. I think it is more than appropriate in this case.

1 THE COURT: Thank you.

2 Mr. Benvie, this is your opportunity now to
3 speak. And I'll hear you on anything that's relevant to
4 sentencing.

5 THE DEFENDANT: Okay. Well, I'd like to start
6 with the very first part of the sentence investigation where
7 we had the revocation hearing. And it's just interesting to
8 me how the prosecutor over here didn't take the time to
9 speak with the owner of the company, who was my supervisor.
10 I was the general manager. I tried to explain that, but
11 they knew that because Daryl had that on record. Everybody
12 knew the owner was off site. So to bring in a witness who
13 made those claims, a disgruntled employee, at the very
14 best -- okay? -- who said I was drinking -- I took a U.A. I
15 wasn't drinking, okay? -- and then made this big story about
16 how I left, irresponsibly, the building. I closed the doors
17 for two hours. I was at the building and I was picked up at
18 the regular time. I was not vanished, gone, or missing for
19 eight hours. And so I find that as -- again, when you look
20 at a political prosecution, that they keep saying this
21 isn't, you look at how they manufacture things to make it
22 look like you did things you didn't do.

23 Now, you have a letter in your hand, he's willing
24 to testify, as well, from the owner of the restaurant, who I
25 think hopefully sets that clear as to what happened and

1 whether or not I had permission. He also called KOB4 and
2 tried to stop them from airing Ms. Sander's article. So
3 that's -- I'll start with that.

4 So the whole La Posada thing? I was there for a
5 year, I followed their rules, I did what I was supposed to
6 do there. And I don't know what happened, but there was a
7 curve ball. I think it was a setup, to be honest. And the
8 evidence suggests that it's a setup.

9 Okay? Moving on, I wasn't fired. This says I
10 was fired. I was not fired. Okay? The owner had to close
11 the restaurant after they detained me -- okay? -- and found
12 out that I wasn't coming back to work anytime soon. Much
13 different story than what you heard testified and presented
14 by Mr. Castellano. Okay?

15 Now, we get to the border, okay? I was wearing
16 nothing that indicated I was a Border Patrol agent, that I
17 had power I didn't have. I did nothing to hurt anybody.
18 Matter of fact, I saved a life. And you don't have to
19 believe me, you can watch the video.

20 Mr. Castellano, one of your facts are wrong. And
21 I'm going to tell you what it is: The Department of
22 Homeland Security has numbers for border crossings that took
23 place in 2019 at the time I was on the border. There was a
24 hell of a lot more than 24,000 people that went through the
25 border. You also have to understand that while you say and

1 told the jury that I did not interact with 12,967 people,
2 again, that wasn't lie. And you don't have to take my word
3 for it, it's on video, Mr. Castellano. Videos that you
4 didn't show that weren't allowed into the court during the
5 trial, which would have had a different outcome had people
6 known the truth. But the truth was stopped from coming into
7 the trial.

8 Another issue, okay? You've got "detention" and
9 "ordered" all over this thing. There is a difference
10 between ordering and asking people. Nobody was ordered in
11 either one of those videos to do anything. If I say "stop,"
12 that's freedom of speech. That's not -- you know, nobody
13 held a gun and pointed it at somebody and said "Stop, Border
14 Patrol." Okay? You fabricated this case. I'm going to
15 fight it. I'll go to prison. But I'm going to tell you
16 something, Mr. Castellano, your Democrats -- okay? -- you
17 organized this with Veronica Escobar. You organized it with
18 Michelle Lujan Grisham. The reason you did it, your motive,
19 is because -- what were they hiding? What were they hiding,
20 Mr. Castellano? What were they hiding? How about oath of
21 office? How about treason, okay? Oh, how did they commit
22 treason? That's a serious accusation, Mr. Benvie. What did
23 they do? What did they do? Did they not lie about what
24 happened at the border? Did they not pull the National
25 Guard off the border? Why did they pull them off the

1 border, Mr. Castellano? Why did they do that? And what did
2 they do when they did that? Oh, that's right, we had a
3 strained Border Patrol.

4 So what happened then? Oh, we had open -- Border
5 Patrol's first job is what? Deterring weapons of mass
6 destruction. What's their second job? Preventing terrorism
7 and enemies coming into the country. But instead, these
8 Democrats lied to America and said that Donald Trump
9 manufactured the crisis when, in fact, he didn't; when, in
10 fact, my videos -- not the two videos you chose, you --
11 yeah, you went like the Bible and picked a verse and built a
12 religion, okay? -- it shows what was going on out there,
13 okay? And for you to say I wasn't working with Border
14 Patrol agents, you're out of your mind. I have hours of
15 videos of Border Patrol agents -- and this is for you, Your
16 Honor -- that are actually thanking me for what I was doing.
17 Actually, the Santa Teresa guy you brought in, you brought
18 in the wrong guy. The guy you should have brought in was
19 the guy from El Paso, the guy who got removed as chief, who
20 got sent to Michigan. Oh, the jury didn't hear that,
21 either. But they might have had a different opinion, if
22 they did.

23 Let me tell you something else the jury didn't
24 hear, okay? Another thing the jury didn't hear from any of
25 this was the proper instructions of what they were supposed

1 to base the crime on: USC 912, 18 [sic]. You told them
2 that simply by me saying "Border Patrol" -- I didn't say, "I
3 am Border Patrol," never said that -- by my saying "Border
4 Patrol" while pointing behind me -- how many Border Patrol
5 agents approach immigrants undercover, as you implied that
6 I'm undercover, with a cell phone camera, which, by policy,
7 Border Patrol is not allowed to carry a cell phone camera or
8 video or record anything. But you said I was impersonating
9 a Border Patrol agent because I said, "Alto," I said,
10 "Border Patrol," as I was pointing like this behind me to
11 the agent who was sitting up the road, which I had passed in
12 my car, okay? And it's funny how he got there within, what,
13 three minutes?

14 Now, if Border Patrol hadn't been there just
15 because you say, The reason I'm here is because Mr. Benvie
16 said Border Patrol ain't there. The reason I said that is
17 because I was talking to my camera, the thousands of people
18 who were watching this live, who disagree with you and your
19 prosecution and your crazy Democrats, who think that this is
20 a joke, who think that this is some kind of a -- a game to
21 prosecute a private citizen maliciously -- okay? -- and then
22 try to make a double felon out of them.

23 And then you bring a cancer story, a cancer story
24 that hasn't even been proven. And there's so many
25 conflicting versions. The mom doesn't -- the boy doesn't

1 exist, is what we start with. Then the Dad shows up here
2 and he's all upset, but he won't admit that I helped his
3 mother. That's the whole story you're all missing here.
4 His mother. I paid for the attorney. Mr. Cremeens knows
5 damn well who I am. Okay? I spent thousands of dollars on
6 legal fees, not because she's my girlfriend, as the story
7 changed and evolved, but because of the fact that I helped
8 her and thought that it would be a good thing to do to help
9 her get her son back. Okay? So far what you've done is
10 you've perjured yourself. This right here and everything
11 I'm saying right now -- and I know Orlando hasn't had time
12 to watch all of the videos because, for some reason, he's in
13 El Paso, Texas, and where am I? Stuck in Bernalillo County
14 for a year and a half. Doing what? You got to get a job,
15 Mr. Benvie. But you know what? You got a busy attorney
16 over there. He didn't have time to go through all this
17 crap.

18 So in a nutshell, everything you write looks
19 great on paper, if you take the sizzle to the words and some
20 of my context statements that are taken out of context
21 versus the written transcript of the trial, okay? So I
22 never said I was associated with Border Patrol. Let me
23 repeat that. I never said I was associated with Border
24 Patrol. You're using that to give me an enhancement. What
25 I did say is that Border Patrol gave us rules of engagement.

1 I don't take that statement back. That's a fact.

2 And you don't have to believe me again. Because
3 you know what, again, I'm going to point you to another
4 resource that the jury should have seen that you didn't
5 bring into the picture. And let me tell you what that is,
6 Your Honor. When Border Patrol gave me the rules of
7 engagement, they told me, for my protection and for the
8 protection of the group, that they were going to do reports
9 on the individuals that we turned over. To. Them. Did you
10 get those reports, Mr. Castellano? How do you say I'm not
11 associated with Border Patrol when we're writing reports
12 about what they have to say? Did anybody complain? I don't
13 think so. How many reports are there, Mr. Castellano? The
14 jury should have seen that. Because wouldn't that have
15 removed any doubt at all? If you were seeking the truth
16 about this case, Mr. Castellano, which you're not, but you
17 say you are, wouldn't that have been important for the jury
18 to hear, if you weren't politically motivated, if this
19 wasn't a corruption case, if this wasn't a let's picture and
20 paste everything together?

21 Let me give you another example of corruption in
22 this case: The warrants that were July 15th out of
23 Oklahoma. This gets better, okay? You keep referring to
24 this stolen vehicle warrant in Tennessee, \$10,000, as if
25 that's already been charged and followed. You give an

1 example about the Penske truck in Oklahoma, okay? Where was
2 I at when I was arrested, Mr. Castellano? Where was I? I
3 was at court, in Oklahoma, with my attorney, in the middle
4 of resolving that case. You act as if you know the
5 resolution, that I'm guilty of stealing a rental truck. A
6 lot you don't know.

7 And I'm going to tell you something else.
8 Mr. Cremeens. We're about to file a police report on your
9 good buddy, Mr. Cremeens, for filing a false police report
10 when his wife, his ex, has every right and did at the time
11 to take money for the little boy. The little boy is still
12 not out of the clear. He's got another year. This is about
13 a family trial. This is about a family case. This is about
14 a guy who alienates -- alienates -- you ever heard of
15 "parental alienation"? That's Mr. Cremeens. Plays the
16 bigshot, has the Facebook page, pretends he's father of the
17 year, puts the boy out there. But guess what's done? He's
18 destroyed an entire family. She lost her house, had to pawn
19 it to pay for attorney's fees. You know why? Because while
20 he was here in court -- let me tell you what Mr. Cremeens
21 did the last time he was here. He was here with his family
22 attorney, Laura -- what's her last name? I can't remember
23 now. Laura, whatever, she's seen me plenty of times because
24 I brought ex-wife to court. Guess what she was here doing?
25 They were having a romantic getaway. He was cheating on his

1 wife. That's what they were doing here. They were screwing
2 each other. How do you like that, Mr. Castellano? You want
3 to know the truth? Ask Orlando, he saw it. I saw it. And
4 you know what? It's been an accusation that's been out
5 there for a long time. The only reason Mr. Cremeens flies
6 from Kentucky to here is because he's trying to damage my
7 credibility, which you guys did a good job of doing when you
8 started this case -- my credibility, okay? -- so that I am a
9 worthless witness in family court. Because I'm one of the
10 key witnesses to Ryan, the little boy with brain cancer --
11 who I was there when he had his surgery -- getting his mom
12 back, who he wants to be with. And if you don't believe
13 that, you don't have to believe me. There's a ton of the
14 videos of the little boy crying and, even at the hospital,
15 asking for his mother, while Mr. Cremeens grabbed him by the
16 arm violently, dragged him into the closet and closed the
17 door shut. This was going on way before I came into the
18 scene. This is something that started back in 2011.

19 So I love the dramatics. Obviously, you knew you
20 weren't sure if you could win the Border Patrol case, so you
21 decided to bring in Mr. Cremeens and his dog and pony show
22 so that you could, Oh, Mr. Benvie did this to a boy with
23 cancer. No, he didn't. No, he didn't. It's all
24 allegations. It's all bull. And all of this, this is all
25 toilet paper right here. Now, you may have a judge who goes

1 along with you, Mr. Castellano, doesn't care about the
2 facts, but there is a judge out there.

3 This was all done by Democrats. There was not
4 one Republican. You say a Republican prosecutor. Again,
5 I'm going to call you a liar. You know why? Because you
6 wouldn't answer the question, when my attorney, Mr. Orlando,
7 asked you what, specifically -- who, specifically, made you
8 go through hundreds of hours of tapes looking for potential
9 crimes. You know what he told me? Well, it was an
10 anonymous -- we don't know who -- the FBI doesn't know who,
11 but they just started going through tapes randomly because
12 nobody with power asked them to, right? I'm a conspiracy
13 theorist, right, Mr. Castellano? Isn't that -- isn't that
14 what I am? Okay?

15 So yeah. Then we go back here. We look at
16 the -- we look at all of this, all this crap. You bring in
17 the wrong Border Patrol people. The two people you brought
18 in, we had very little contact with. That's a fact. Even
19 members of the media, who are liberal -- okay? -- did
20 documentaries down on the border where we were working with
21 Border Patrol -- I'm going to say it again -- working.
22 With. Border Patrol. Lots of vehicles out there.
23 Helicopters flying. People running all over the place. We
24 preventing them from getting hurt. How about this,
25 Mr. Castellano? Did you tell anybody in the courtroom that

1 a woman would have been dead, had it not been for our
2 organization? Did anybody talk about that? That a life was
3 saved? That the community on the border was safer because
4 we were there? No. No, because that doesn't fit the
5 political agenda here.

6 So you guys do what you're going to do to me.
7 Know this: I will be back in court. I'm going to file. I
8 have a right to. I may have to get a different attorney, I
9 don't know. But I'm going to fight this. You know why?
10 Everybody said, "Don't fight it, Jim. Just play nice with
11 them. Sign the deal. Six months, you could have walked
12 away. Sign the deal. Be nice, Jim." You know what? Some
13 people have to fight. You know why they have to fight?
14 Because if nobody fights for the truth and you don't stand
15 for something, you lose everything.

16 And I'm ready to sit behind bars, Mr. Castellano,
17 if that's what it takes, but I'm going to get Veronica
18 Escobar, Michelle Grisham, and I'm going to get Deb Halen
19 all under oath in some courtroom, somewhere in this country.
20 And even if you let me go today, I don't care. I'm not done
21 with this. This is about principle. And you can go back
22 26 years. That's what Democrats do. They go back 26 years.
23 Back in 1900s, Mr. Benvie took a popsicle stick that didn't
24 belong to him.

25 You're a sick man, Mr. Castellano. You took an

1 oath of office, too. To find of the truth. Your truth that
2 you're telling this judge right now, it shows that you did a
3 lack of homework, a lack of research. You haven't done your
4 homework, okay? And you're an embarrassment to the office.
5 So do what you're going to do. I don't care. I've laid out
6 the facts here. This is bullshit. And you don't have to
7 take my word for it. You can look at the law. You can look
8 at the videos. It'll require more videos and more time.
9 But you don't want those other videos in the courtroom. I
10 had no witnesses, Mr. Castellano. Not one witness. You
11 brought five people in here. Five people who weren't even
12 on the border. Five people who knew nothing other than the
13 videotapes. The judge is just as much of a witness as you
14 are. Or he is. Or anybody else. And I didn't see anybody
15 get hurt in that video. Matter of fact, I went back to the
16 comments about from the 400,000 people that were watching
17 the videos, because I wanted to see did anybody on those
18 videos comment and say, Holy shit, he's impersonating a
19 Border Patrol agent. Guess what? Nobody said that. Except
20 for the FBI agents in Albuquerque, which is -- I don't
21 believe that's a coincidence, either -- from the
22 counterterrorism department, okay? Everybody who believes
23 in the Second Amendment knows they're terrorists, aren't
24 they? Yeah, that's coming front and center, too. Second
25 Amendment rights? They're inalienable, okay?

1 So you know, you know where we're at with this
2 country: Socialism versus a free republic. And guess what?
3 Nobody voted for open borders, Mr. Castellano. Nobody said,
4 at this point, it was okay to leave the borders wide open
5 susceptible to terrorists and other people. And you want to
6 know something? If Border Patrol wanted us out of there, or
7 even the Department of Homeland Security, for that matter,
8 not the Albuquerque FBI, we wouldn't have been there for
9 five months, camped. Who camps next to the border, if they
10 don't have permission from the Border Patrol? Who does
11 that? Can you go grab your trailer and go park by the wall?
12 See how long you last there, Mr. Castellano. Go try it
13 right now. That should settle the case, shouldn't it? Get
14 your RV, get your buddies, go down there with guns and
15 camouflage, say, "Hey, man, we're here to protect the
16 border." You ain't got permission, you ain't going to be
17 there, Pal.

18 The reason I had to drive, the reason I had to
19 wear my jacket? Those pictures that you have where, in the
20 first couple days, I had the jacket, is because Border
21 Patrol would not allow anybody past the gate, the end of the
22 wall, unless they had specific identification. Now, it
23 wasn't given us to, you're right. Nobody gave people
24 camouflage, nobody issued them, but they did give us rules
25 of engagement.

1 And matter of fact, Chad Walsh, the acting Border
2 Patrol director for the United States of America -- let's
3 throw him into this now -- at that time I was there, he did
4 a press conference asking for nongovernmental organizations
5 to help at the border. Call me a liar. I'll show you the
6 news video. That was the El Paso Sector. The El Paso
7 Sector had over 100,000 people cross, Mr. Castellano, not
8 24,000. We had more than that in the month of April and
9 May. You're trying to make it sound like, Oh -- I don't
10 know where Mr. Slosar is getting his numbers. I'm not
11 really that familiar with Mr. Slosar, being that he was way
12 down the road from where we operated, okay? But you can go
13 to the DHS. You don't have to take my word for it, unless
14 you don't believe that the DHS is giving credible numbers.
15 Some people don't. But you used that to tell the jury I was
16 a liar. You -- you misled them with your fake numbers.

17 Then you continued to mislead the jury by telling
18 them that Mr. Benvie was -- thought it was a joke to cross
19 into Mexico and take pictures of license plates, but he
20 really wasn't giving them the Border Patrol, he was just
21 doing it for fun. Are you serious? Do you still hold to
22 that? Because I'm ready to have Border Patrol agents come
23 into the next trial. I didn't think I needed them, to be
24 honest with you, Mr. Castellano, because I didn't want to
25 put their families in harm's way. There is no honor for

1 them. I'm not stealing anybody's valor. Okay? They were
2 being degraded because they were being accused of putting
3 kids in cages. Okay? They were being degraded by the fact
4 that people were mocking them and calling them "racist" just
5 because of the job that they do. And they do it well, by
6 the way. Okay? These are people whose families went out
7 and bought things out of their own pockets. Their own
8 water, their own food, to feed who? To feed the immigrants
9 when they came across without shirts on, making sure that
10 they were safe, making sure that they didn't run out into
11 Paisano, like it happened when we were out there, and get
12 hit by a car and get killed. Agents whose wives said, Thank
13 you, Mr. Benvie. Thank you for being out there. You know,
14 my husband's out there at 2:00 in the morning. And there
15 are 1,700 people and cartel members escorting people to the
16 end of the wall, running across the border, and I'm over
17 there by myself. And you know what? It's nice that there's
18 a few extra people out here that give a shit.

19 Don't tell me I stole valor. Those videos are
20 nothing but giving valor and praise to the Border Patrol and
21 the men who were out there, working. I never said, "I am
22 Border Patrol." If anybody stucks [sic] or believes in law
23 and order, it's me, sitting right here. And if I felt that
24 I did it, I'd admit to it. I'd tell you, "I committed [sic]
25 an agent." I'm going to go in prison just because I didn't

1 do it. I don't care. If it helps take down some people
2 that I think have done some real damage to this country,
3 I'll sit in prison all day. Because something's got to
4 stop. Something's got to stop, and it starts with the
5 lying.

6 Escobar is sending her attorneys across the
7 border -- she was a judge or her husband's a judge --
8 sending attorneys across the border to show people how to
9 get access to fake birth certificates; how to lie to
10 Immigration officials about credible fear. And you think
11 it's a joke. You don't go -- you don't talk about the
12 people that were out there vulnerable. It's kind of like
13 what Hillary Clinton did in Benghazi. She left everybody
14 hanging; said, Screw you.

15 So you made a case. You've created a perception
16 for this jury and this judge, obviously, that these things
17 happened that didn't happen. But it's perception, it's not
18 reality. Some people say, "Perception is reality." You've
19 created a perception. And along with your weak statute and
20 the way you changed it at the end there, you know what
21 you've done now? You've created new case law. Your new
22 case law now says that anybody walking near the border who
23 asks, "Where are you from," is now a Border Patrol agent.
24 They've now impersonated a Border Patrol agent.

25 You said I was the poster child. Those were your

1 words. He's the poster child for this. The jury
2 deliberated for an hour and a half because they didn't know
3 what the hell the crime was. They needed further
4 instruction. I almost thought I did it, based on what you
5 said. Because I did say, "Border Patrol." I admit to that.
6 I did say, "Alto," stop, and I did say the other things I
7 had to say.

8 So with that being said, I'm going to let you
9 guys deal with this, because you know what's here, you know
10 what's right and what's wrong. I've shown you all the
11 problems with this case, I've shown you the corruption
12 involved in it, and I've shown you that this is political.
13 Nobody wants to admit it in here, but this didn't just start
14 on its own. There was more than just a letter from -- to
15 Congress, there was more than just the ACLU whining and
16 crying. The same ACLU, by the way, that was down there
17 destroying Albuquerque, okay? I'm just saying, you know,
18 let's call a spade a "spade." The Southern Poverty Law
19 Center? They're in on this, too. Did you know that?
20 Because they label people "hate organizations," and then
21 they raise -- they do the panhandling, they raise the money
22 off of that.

23 So you know, you got -- you got what you got
24 here. You've already had me incarcerated for almost
25 16 months. Just for a, what, three months in jail? The

1 judge down there in Oklahoma said that Mr. Benvie shouldn't
2 even be in jail. He said, Mr. Benvie should have been
3 released with an ankle bracelet and kept 10 miles from the
4 border after he had a job. Guess what? You didn't give a
5 shit about the judge in Oklahoma and what he had to say
6 because you know what you did? You kept me in the halfway
7 house. I was there longer than people who were on trial for
8 killing people. People that got out of the prison as sex
9 offenders. I was there for, what, a year, over a year? And
10 then finally, right before sentencing, we get the work scam.
11 You knew who my boss was. Nobody called him in here. And I
12 sure as hell couldn't call anybody because I'm stuck here.
13 I'm relying on other people to call and make calls for me.

14 I've got nothing else to say. I didn't do it.
15 I'm not taking responsibility...to get three points, so you
16 can bribe me for three points; a little less time in jail.
17 I'm not going to do that, either. That's actually wrong
18 because, when somebody goes to trial, they're exercising
19 their right and taking responsibility. Taking
20 responsibility isn't whether I agree with you finding me
21 guilty or not. You're asking me to give up my rights to
22 appeal in order to get that three-point deduction. That's
23 pretty sick, if you ask me. I'm not that guy.

24 So with that being said, I'm done. I've got
25 nothing more to say.

1 MR. CASTELLANO: Your Honor, if may have a couple
2 of points of clarification, based on Mr. Benvie's remarks?

3 THE COURT: Yes, sir.

4 MR. CASTELLANO: Excuse me. My lights just went
5 out in my office.

6 For one, in terms of numbers, Agent Slosar didn't
7 say it was 24,000 people on the entire border. It was
8 24,000 people from the Santa Teresa station.

9 THE DEFENDANT: It was the El Paso and Santa
10 Teresa that counted for me.

11 MR. CASTELLANO: The transcript --

12 THE DEFENDANT: You have the wrong location here,
13 Mr. Castellano.

14 MR. CASTELLANO: -- at the Santa Teresa station.

15 Now, Mr. Benvie says we're trying to put words in
16 his mouth. In page 58 of the transcript, in his own words,
17 he says (reading), "I don't agree with that, but I will tell
18 you this: They would stop if they knew the word and they
19 thought that I could either get them to Border Patrol or I
20 was associated with Border Patrol. And the fact is I was
21 associated with Border Patrol." In his own words.

22 And then, when Ms. Camacho asked, down the page,
23 once again, on page 58, "So you said you were associated
24 with Border Patrol, in your mind, because you had spoken to
25 Border Patrol agents?"

1 His response? "Because I was there for
2 five months, and I turned over 12,970 people. Is a little
3 bit -- that's a little bit more than association. 24 hours
4 a day. We were out there longer than most Border Patrol
5 agents [who] worked on a shift."

6 So in his own words, as I've stated from the
7 transcript, Mr. Benvie admitted he was associated with the
8 Border Patrol.

9 THE DEFENDANT: (Speaking.)

10 THE COURT: Mr. Benvie, Mr. Benvie, you are muted
11 at this point because you were interrupting Mr. Castellano.
12 I'll allow you to speak when he's through.

13 MR. CASTELLANO: Thank you, Your Honor, I have
14 nothing further.

15 THE COURT: Thank you.

16 Mr. Mondragon, anything else?

17 MR. MONDRAGON: No, Your Honor. I think my
18 client, he covered everything he needed to cover on the
19 issues he has with this case.

20 THE COURT: And Mr. Benvie, I'll unmute you so
21 you can have a moment to make any comments you might have
22 had about Mr. Castellano.

23 THE DEFENDANT: Just that, when I -- when she was
24 asking me that series of questions in a quick hurry, my
25 intention with that statement was simply this: Is that I

1 said "Border Patrol" because we didn't know what country
2 they were from also. And sometimes, when they heard "Border
3 Patrol," they recognized that word. Sometimes they didn't.
4 In this case, I don't even think they recognized the word
5 "Border Patrol," to be honest with you. But in any case, I
6 would say it, so if they thought -- if they thought that I
7 was associated with Border Patrol or knew how to get them
8 there that they would stop and that -- because they were
9 looking for Border Patrol, Mr. Castellano. Most of these
10 people who came across weren't running from Border Patrol.
11 We were there to show them how to get there.

12 Border Patrol did ask us if we would have them to
13 sit down, but we never forced anybody to sit down. We
14 never -- as the word says "detention" or "detained," we
15 never forcibly detained anybody. So if it's worth six years
16 in prison for asking somebody to sit down, that's what
17 you're -- that's what you're asking the judge to do right
18 now, Mr. Castellano.

19 I got -- that's it. That's all I got to say.

20 THE COURT: Thank you, Mr. Benvie. And I have
21 heard you at length this afternoon, Mr. Benvie. I heard you
22 at length at trial and at pretrial hearings. And I believe
23 that the jury came to the right conclusion. I believe that
24 you did represent yourself as Border Patrol on multiple
25 occasions. You testified, yourself, that you were

1 associated with Border Patrol, that you had been given
2 permission by numerous members of the Border Patrol that you
3 declined to name, had given you that permission.

4 And so the prosecution, in your mind, is
5 politically motivated. I don't believe that. I certainly
6 can't speak to it. I don't know of any evidence that would
7 support your accusation. But whatever the motivation, you
8 were appropriately found guilty of representing authority
9 you did not have. And in that process, I believe that
10 you -- you perjured yourself. And looking at the history
11 and knowing of the -- of your other civil and criminal
12 history, I don't believe that you know the truth. I think
13 you've convinced yourself of a lot of things, but I'm not
14 sure that the truth is in you.

15 I will --

16 THE DEFENDANT: You don't have to take my word,
17 Mr. -- Your Honor. Your Honor, if you want to take the time
18 and watch the videos, everything that you're saying that I
19 didn't say or didn't do is on video. That's why I videoed
20 everything. That's why I told the lady, I said, Everything
21 is on video. There's proof of everything I'm telling you,
22 so you don't have to trust me, you don't have to believe me,
23 it's all videoed, but you have to take the time to watch it.
24 And I've told you there's hundreds of hours of video. But I
25 can't do it when I'm tied up and I don't have the attorney

1 to spend hundreds of hours with me while I'm stuck in
2 Albuquerque.

3 THE COURT: Mr. Benvie, I understand that's your
4 position. And that should be the last time that you
5 interrupt me while I'm speaking. I didn't interrupt you
6 while you were speaking. And in fact, we'll mute his mic,
7 please, in the meantime.

8 I...in what I believe is a misguided sense of
9 purpose and heroics, you and the members of the
10 Constitutional Patriots may have believed you were well
11 motivated, that you should be there and you were serving a
12 legitimate purpose, but I can't speak for the rest of the
13 folks involved, but I can speak to you as it relates to
14 these charges. And you crossed the line and that, I -- I
15 mean that metaphorically, but in fact, you also crossed the
16 line into Mexico.

17 I -- part of the judge's purpose in imposing any
18 sentence is rehabilitation. I have heard you, as I said, at
19 length on multiple occasions and, frankly, I don't think
20 that any sentence I'm going to impose is going to change
21 your mind or mis- -- or otherwise direct your thoughts. And
22 I think you will come out of jail as angry and as bound up
23 by your conspiracy theories as you were when you went in.
24 And so the reason for the sentence and the only thing I can
25 hope to achieve is -- is you will not be committing these

1 sorts of crimes, you will not be putting yourself and others
2 at risk, as I believe you did out there on the border, in
3 the meantime.

4 And with all that in mind, I've -- I'll adopt the
5 Presentence Report factual findings. I've considered the
6 Sentencing Guideline applications and the 3553 factors.

7 The Offense Level is 16. The Criminal History
8 Category is I. The Guideline imprisonment range is 21 to
9 27 months.

10 I note that the Mr. Benvie, on at least two
11 occasions, portrayed himself as a member of the United
12 States Border Patrol to migrants entering the United States
13 from Mexico for the purpose of conducting unlawful arrests,
14 detentions, or searches. Furthermore, he obstructed the
15 administration of justice by providing material false
16 testimony at trial; namely, that he and members of his group
17 were given permission by the United States Border Patrol to
18 detain and question migrants crossing the international
19 border.

20 As to Counts 1 and 2 of the Indictment, the
21 defendant, James Christopher Benvie, is committed to the
22 custody of the Bureau of Prisons for a term of 21 months.
23 Those terms will run concurrently.

24 As to Counts 1 and 2, I'm going to place
25 Mr. Benvie on supervised release for a term of one year as

1 to each count. They will run concurrently. And Mr. Benvie
2 has to comply with the mandatory and standard conditions of
3 supervision. I will suspend the mandatory drug testing
4 condition, as the defendant poses a low risk of substance
5 abuse. The following special conditions will be imposed,
6 though:

7 I want you to complete 50 hours of community
8 service during your supervised release. The Probation
9 Office will supervise your participation in the program by
10 approving the program and signing off on the written
11 verification of hours.

12 You have to submit to a search of your person,
13 property, automobile, computers. All of your stuff and your
14 person are subject to a search, if the Probation Office has
15 reasonable suspicion to believe that you have failed to
16 abide by your conditions of release. And anyone that lives
17 with you needs to know that the residence and occupants of
18 that home are subject to a search.

19 You're not to incur new credit charges, negotiate
20 or consummate any financial contracts, or open additional
21 lines of credit without prior approval of the Probation
22 Office. And you have to provide the Probation Office access
23 to requested financial information and authorize the release
24 of financial information.

25 You have to reside at a residential reentry

1 center for a term of up to three months. You have to follow
2 all the rules and regulations of that center.

3 Based on your lack of resources, I'm not going to
4 impose a fine. However, I believe that I've imposed as a
5 special condition that you complete community service and
6 reside at a residential reentry center; therefore, I'll
7 conclude that the total combined sanction, without a fine,
8 is sufficiently punitive.

9 The special assessment of \$100 as to each count
10 of conviction for a total of \$200 must be paid during the
11 term of your incarceration or subsequent supervision.

12 And you have the right to appeal the sentence
13 I've just imposed. That would have to be done within
14 14 days. Counsel could assist you and it wouldn't cost you
15 anything.

16 Mr. Mondragon, is there a request for
17 designation?

18 MR. MONDRAGON: Your Honor, I believe he wanted
19 to be, when I spoke to him last time, I think, near
20 Pennsylvania, if I'm correct?

21 THE COURT: Is Mr. Benvie unmuted?

22 Mr. Benvie, can you hear me now?

23 THE DEFENDANT: Yeah.

24 THE COURT: The question was about designation.
25 And Mr. Mondragon indicated that you had suggested a

1 preference for Pennsylvania; is that true?

2 THE DEFENDANT: Are you talking about to go to
3 prison?

4 THE COURT: Yes --

5 THE DEFENDANT: Okay.

6 THE COURT: -- where you'll be held.

7 THE DEFENDANT: Okay. So yeah, Pennsylvania.

8 THE COURT: I'll be glad to recommend that the
9 Bureau of Prisons house you in Pennsylvania. Do you have
10 family there? Is that the reason for the request? I --

11 THE DEFENDANT: I have somebody there that's kind
12 of like a sister, but like I said, I've got to have...

13 THE COURT: That will help in the recommendation
14 to the Bureau of Prisons, they like to designate folks to
15 facilities that are close to family, so you can have ongoing
16 contact with them.

17 Is there anything else this afternoon?

18 THE DEFENDANT: So I just want to -- so I
19 understand this: So I'm going to go to prison for two years
20 and then a year of probation? Is that what you're saying or
21 halfway house again?

22 THE COURT: So 21 months was the sentence. You
23 have credit against that 21 months for all of the time that
24 you've served. And yes, I'm imposing a period of one-year
25 supervision following your release. And the time at the

1 residential reentry center is up to three months. If you
2 have a home that is approved by the Probation Office, then
3 you won't have to go to a residential reentry center. It's
4 an option for your release.

5 THE DEFENDANT: Okay.

6 THE COURT: Anything finally, Mr. Castellano?

7 MR. CASTELLANO: No, Your Honor.

8 THE COURT: Mr. Mondragon?

9 MR. MONDRAGON: Nothing further, Your Honor.

10 THE COURT: Mr. Benvie?

11 THE DEFENDANT: No.

12 THE COURT: Anything else?

13 THE DEFENDANT: (Indicating.)

14 THE COURT: Thank you. We're adjourned.

15 COURT CLERK: Thank you, everyone. That
16 concludes this afternoon's hearings.

17 (The proceedings concluded at 2:38 P.M.)

18

19

20

21

22

23

24

25

1 UNITED STATES OF AMERICA

2 DISTRICT OF NEW MEXICO

3
4 CERTIFICATE OF OFFICIAL REPORTER

5 I, Vanessa I. Alyce, CRR, RPR, NM CCR, and Federal
6 Official Court Reporter in and for the United States
7 District Court for the District of New Mexico, do hereby
8 certify that pursuant to Section 753, Title 28, United
9 States Code, that I did report in stenographic shorthand to
10 the best of my skill and ability the foregoing pages 1-47 of
11 the proceedings set forth herein, that the foregoing is a
12 true and correct transcript of the stenographically recorded
13 proceedings held in the above-entitled matter and that the
14 transcript page format is in conformance with the
15 regulations of the Judicial Conference of the United States.

16
17 Dated this 2nd day of November 2020.

18
19 S/Electronically Filed
20 Vanessa I. Alyce, CRR, RPR, NM CCR #259
21 Federal Official Court Reporter
22 100 North Church Street
23 Las Cruces, NM 88001
24 Phone: (575) 528-1430
25 Email: Vanessa_Alyce@nmd.uscourts.gov

UNITED STATES DISTRICT COURT
100 N. Church Street, Las Cruces, NM 88001
(575) 528-1430